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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO. 2356 OF 2004

PETITIONER:

P. R. No. 2346/04
Presented by Shri Sanjeev Rehar
dated 2-8-04

Brindawan Vishwakarma, S/O Devi Singh Vishwakarma, Aged about 33 years, Panchayat Karmi, Gram Panchayat, Deosaral, Block Pithora, District Mahasamund (C.G.).

Versus

RESPONDENTS:

1. State of Chhattisgarh, Through Secretary, Department of Panchayat and Rural Development, D.K.S. Building, Mantralaya, Raipur (C.G.).

2. Director, Panchayat, Raipur (C.G.).

3. Collector, District Mahasamund (C.G.).

4. Gram Panchayat, Deosaral, Through Sarpanch, Deosaral, Block Pithora, District Mahasamund (C.G.).

RECEIVED-COPY 2/8/04 Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No. 2356 of 2004

Brindwan Vishwakarma

Vs.

State of Chhatrtisgarh & others

Appearance:

Shri B.D. Guru with Shri S.R.J. Jaiswal, counsel for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the State/ respondents no.1, 2 & 3

Shri Sunil Sahu, counsel for respondent no.4.

Writ Petition No.1451/2004

Gendlal Kobragade

Vs.

State of Chhattisgarh and others

Appearance:

Shri Parag Kotecha, counsel for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the State/ respondents no.1, 2 & 3.

Shri Rakesh Pandey, counsel for respondent no.4.

ORDER
(18.09.2006)

Sunil Kumar Sinha, J,

(1) A common question is raised for consideration in both these writ petitions as to whether a *Panchayat Karmi*, later on declared as the Secretary u/s 69(1) of the M.P.(C.G) Panchayat Raj Adhiniyam 1993, hereinafter referred to as the Act, can be removed from the post of Secretary without following the

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procedure laid down under Rule 7 of the M.P. Panchayat Service (Discipline and Appeal) Rules 1999 (hereinafter referred to as the Rules) ? In other words, whether the said rules of 1999 are applicable to the *Panchayat Karmis* who are subsequently declared/appointed as Secretaries also by order of the prescribed authority u/s 69(1) of the said Act ?

(2) The brief facts are that the petitioner in W.P.No.2356/2004 was initially appointed as a Panchayat Karmi of Gram Panchayat, Deosaral, Block Pithora, Distt. Mahasamund vide order of Sarpanch dated 4.11.1995. He was declared as the Secretary of the Gram Panchayat u/s 69(1) of the aforesaid Act. On some complaint being made against him, a preliminary enquiry was ordered and a report was obtained by the Collector. The collector acted on the said report and passed an order dated 22.11.2002 by which he set aside the earlier order whereby the petitioner was declared as the Secretary of the said Gram Panchayat. The petitioner filed a revision against the aforesaid order before the Director, Panchayat, Raipur, vide Case No.28/B-121/02-03. The Director, Panchayat, dismissed his revision and confirmed the order passed by the Collector. The petitioner has raised the point that since the Rules of 1999 were applicable in case of the petitioner, therefore, his removal from the post of Secretary was not possible without following the procedure laid down in Rule 7 of the said Rules as by virtue of provisions of Rule 5, the penalty imposed against the petitioner was a major penalty and the same deserves to be set aside. His contention is that the principles of natural justice have not been followed in this case. The

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respondents have filed their return in which it is stated that the impugned order of removal was passed by the Collector on an enquiry report submitted and recommendations made by the Deputy Director, Panchayat, Distt. Mahasamund. In fact they could not show any record regarding domestic enquiry, pursuant to Rule 7 of the aforesaid Rules.

(3) The petitioner in W.P.No.1451/2004 was also initially appointed as a Panchayat Karmi, Gram Panchayat, Kalyanpur, Sub-Division Dongargarh, Distt. Rajnandgaon. Later on he was declared as Secretary of the said Gram Panchayat vide order dated 10.8.2000 (Annexure P-1) issued u/s 69(1) of the Aforesaid Act. On some complaint being made against the petitioner, the Executive Office of Janpad Panchayat, Dongargarh, issued a Memo dated 25.9.2000 and called upon the petitioner to file reply to the said complaint. The petitioner submitted his reply on 04.10.2000 and thereafter, an enquiry was conducted by one Shri R.K. Soni, *Panchayat Evam Samaj Shiksha Sanghatak, Dongargarh*, who submitted a report to the Deputy Director and thereafter on the basis of this report, the District Collector Rajnandgaon passed the impugned order dated 23.10.2000 cancelling the earlier order regarding appointment/declaration of the petitioner as Secretary of the said Gram Panchayat. Against the order passed by the Collector, the petitioner preferred a revision before the Commissioner which was ultimately dismissed on 15.7.2002. This revision was dismissed holding that the revision does not lie against such an order. Then the petitioner preferred an appeal before the Commissioner which finally, after

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abolition of the post of Commissioner in the State of Chhattisgarh, went before the Director Panchayat, who ultimately dismissed the appeal of the petitioner vide last order dated 27.4.2004. This petitioner has also raised the ground that the procedure laid down in Rule 7 of the aforesaid Rules 1999 were not followed, therefore, initial order of the removal and consequential orders passed in revision and appeals are required to be set aside.

(4) A similar question arose before this Court in the matter of ***Prakash Chandra Patel –vs- State of Chhattisgarh and others, reported in 2004 Law Times (C.G) Pg. 142***. It was argued in that case that the provisions of the aforesaid Rules of 1999 were not applicable in cases of Panchayat secretary by virtue of proviso to sub-rule (3) of Rule 1 of the aforesaid Rules. The single bench of the High Court presided over by Hon'ble Shri Justice L.C.Bhadoo ruled out that in the given situation provisions of the Rules of 1999 were fully applicable to the cases of Secretaries who were appointed/declared as Secretary u/s 69(1) of the said Act. While hearing another writ petition vide W.P.No.1656/2004, Hon'ble Shri Justice S.K. Agnihotri came across the propositions laid down in *Prakash Chandra Patel's case* (supra) and referred the matter to the Larger Bench for further opinion on this point. Thereafter, the said W.P.No.1656/2006 came up before the Division Bench of this Court and the Division Bench comprising of Hon'ble the Chief Justice Shri S.R.Nayak and Hon'ble Shri Justice D.R. Deshmukh decided the matter on 25.7.2006 by holding that the proviso to

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sub-rule (3) of Rule 1 of the said Rules of 1999 has no application to the cases like present one and the judgment rendered by Shri Bhadoo, J, was held to be unexceptionable.

(5) Sub-rule (3) of Rule (1) of Rules 1999 provides that except as otherwise provided by or under these rules, they apply to all persons employed in connection with the affairs of Zila Panchayats, Janpad Panchayats and the Gram Panchayats and discharging the functions of Zila Panchayat, Janpad and Gram Panchayat provided that nothing in these rules shall apply to the Officers and Servants of the State service who are posted under the Panchayats u/s 69 or are on lone service to the Panchayats u/s 71 of the Act. Sub-section (1) of Section 69 provides that the State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats whereas section 71 provides for deputation of Government servants that the State Govt. may depute to the service of the Panchayat such of its servants as it considers necessary and the service conditions of such deputed servants shall be such as may be prescribed by the State Government from time to time. These provisions make it abundantly clear that the Rules of 1999 would have no application in case of appointments either being made by the State Government or the prescribed authority u/s 69(1) of the Act and also to the persons who being the government servants have been sent on deputation to the concerned Panchayats having their own service cadre. Therefore, for classification in relation to applicability of these Rules, the Character of appointment and also the character of post held by

the persons concerned is a decisive factor and the distinguishable point is that if the persons are appointed by the State Government or the prescribed authority, as the case may be, holding the character of Govt. servant, then only the Rules of 1999 will have no application in their cases. In contrast, the rules will have application to all the persons employed in connection with the affairs of Zila Panchayat, Janpad Panchayat and the Gram Panchayats and discharging the functions of Zila Panchayat, Janpad Panchayat and Gram Panchayat, except the exceptions referred to above that is when the appointment is made either u/s 69 or the employees were sent on deputation u/s 71 of the Act i.e., in case of officers who happen to be members of State service and are posted under the Panchayat u/s 69 or they are on deputation u/s 71 of the Act.

(6) This is further supported with the provisions of section 70 of the Act which independently provide for appointment of other officers and servants of Panchayat. It has been provided by sub-section (1) that subject to the provisions of section 69, every Panchayat may, with previous approval of the prescribed authority, appoint such other officers and servants as it considers necessary for the efficient discharge of its duties. Sub-section (2) provides that qualifications, method of recruitment, salaries, leave allowances and other conditions of service including disciplinary matters of such officers and servants shall be such as may be prescribed. It should be noticed that for the appointments of *Panchayt Karmis*, the State Government has prepared one Scheme known as "*The Panchayat Karmi Yojna*" and

their appointments are being made by the *Gram Panchayat* under the said Scheme which was prepared under sub-section (1) of section 70 of the Act. The frame work of rules of 1999 would show that in exercise of the powers conferred by sub-section (1) of section 95 read with sub-section (2) of section 70 of the Act, the State Government made the aforesaid Rules. A conjoint reading of sub-sections 1 & 2 of section 70 of the Act would show that these rules are framed to regulate the service conditions of such officers or the servants who were appointed by the Gram Panchayat under sub-section (1). Therefore, admittedly, the persons appointed as *Panchayat Karmis* under the *Panchayat Karmi Yojna*, which was a scheme under sub-section (1) of Section 70, shall also be included within the meaning of word "such officer and servants" as contemplated in sub-section (2) of section 70 of the Act and they would be governed by the Rules of 1999 which has been prescribed with reference to sub-section (2) of section 70 of the said Act.

(7) Therefore, it is held that the rules of 1999 were applicable in cases of the petitioners, who were admittedly initially appointed as *Panchayat Karmis* of their respective Panchayats and were only conferred with the powers of secretary u/s 69(1) of the Act and while imposing the penalty, referred to above, a substantial compliance of rule 7 of the aforesaid rules was required, failing which, the impugned orders would not be sustained in the eye of law.

(8) In view of what has been stated above, the writ petitions are allowed. The impugned orders regarding removal of the

petitioners from the posts of secretaries, passed by the respective Collectors and all consequent orders passed in appeals/revisions are hereby quashed. The petitioners shall be entitled to all the benefits in consequence of the quashing of the impugned orders of removal. However, if so required, the State authorities shall be free to initiate disciplinary proceedings against the petitioners for the alleged misconduct committed by them in accordance with the provisions of the Rules, referred to above.

No orders as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/